

SAFETY AWARENESS BOARD

Minutes

Wednesday, January 12, 2005

9:00 a.m.

In attendance: Joseph Sabitoni

Bernard Trembl

Dan Jones

Robin Coia

Wayne Coulombe

Nick Giardino

Eric Anderson

Chairperson, Joseph Sabitoni called the meeting to order at 9:00 a.m.

There is a quorum. All members were in attendance for today's meeting, with the exception of Ed Ladouceur and James Jackson.

The first order of business today is acceptance of minutes of the Wednesday, December 8, 2004, meeting. Everyone had an opportunity to review the minutes. Mr. Wayne Coulombe made motion to approve the minutes as submitted. Mr. Nick Giardino seconded the motion. All members voted in favor.

The next order of business is appeal hearings. There are five (5) appeal hearings on the agenda, for which there is a court reporter.

However, two (2) of the appeal hearings scheduled today, Pezzuco Construction, Inc. and Great Meadow Farm, requested a postponement until the Wednesday, February 9, 2005 meeting. Mr. Sabitoni explained the Board's procedures for conducting appeal hearings. Mr. Karl Swanson, Prevailing Wage Examiner, was sworn in by the court reporter.

APPEAL HEARING:

The first hearing on the agenda pertains to Chicago Bridge & Iron (CB & I). Mr. Mike Zayakosky was in attendance on behalf of CB & I, and was represented by his attorney, Mr. Robert E. Collins. Mr. Zayakosky was sworn in by the court reporter.

There are actually two (2) separate dates and two (2) separate cease and desist orders being taken up on appeal. The first one took place on July 30, 2004 and was a violations by Worldwide Industries, Inc., a sub-contractor of CB & I on the Woonsocket Water Tower. Worldwide Industries, Inc. had an appeal with the Safety Awareness Board regarding this issue on October 13, 2004, and the four (4) fines of \$500 for each violation, totaling \$2,000 were suspended for a 12 month period pending any further violations.

The second violation took place on October 21, 2004 at the Woonsocket Water Tower, and concerned another sub-contractor of CB & I, Site Tech, Inc. That violation on Site Tech, Inc. is also being

appealed at today's meeting.

Mr. Swanson read the first violation. On July 30, 2004, Investigator, Karl D. Swanson, visited the Water Tower Painting Project, Rhodes Avenue, Woonsocket, RI, and found four (4) employees of Worldwide Industries, Inc. working on the project without OSHA 10-hour certification. Those

employees identified themselves as follows: Mr. Gerald Cass, Mr. Robert Hall, Mr. Gary Crowser, and Mr. Jared Scheldon. All of the above individuals were advised of the alleged violations, as was the Project Manager, Mr. David Macanay. Chicago Bridge & Iron is the general contractor on this project. Worldwide Industries, Inc. is a sub-contractor to Chicago Bridge & Iron. CB & I was fined \$950 for each of four (4) violations, for a total of \$3,800. They were fined the maximum amount per violation since this is a second violation by this company.

Mr. Collins, Attorney, disputed the fines issued to CB & I. He does not feel CB & I has a contractual agreement with the employees of their sub-contractors. They have a contractual agreement with their sub-contractor, and Mr. Collins does not believe the law allows for the general contractor to be fined for violations by a sub-contractor's employees. Mr. Collins was advised by the Board that the Department and the Board has interpreted the law to mean that general contractors are responsible for all employees on the job site,

whether it is their own or a sub-contractors employees. There were no further questions by the Board.

Mr. Coulombe made a motion that based on the testimony provided, a finding of fact is made that four (4) employees of Worldwide Industries, Inc., a sub-contractor of CB & I, were working on the Woonsocket Water Tower Project without OSHA 10-hour certification, and a recommendation be made to the Director of Labor & Training that the \$950 fine for each of four (4) employees, for a total of \$3,800 be suspended for a 12-month period. Mr. Dan Jones seconded the motion. All members voted in favor.

The next appeal concerns both CB & I and Site Tech, Inc. with regards to the October 21, 2004 violation. Karl Swanson read the violation. On October 21, 2004, Chief Electrical Investigator, Glenn Dusablon visited the Woonsocket Water Tower Project, Rhodes Avenue, Woonsocket, RI and found an employee of Site Tech, Inc. (Mr. Jeffrey Pacheco) working on the project without OSHA 10-hour certification. Mr. Pacheco was advised of the alleged violations. CB & I Constructors, Inc. is the general contractor on this project. Site Tech, Inc. is a sub-contractor to CB & I Constructors, Inc. Mike Cezarro was in attendance on behalf of Site Tech, Inc. Mr. Cezarro was sworn in by the court reporter. CB & I was issued a fine in the amount of \$950 for this violation. Site Tech, Inc. was issued a fine in the amount of \$950, and Mr. Jeffrey Pacheco was issued a fine in the amount of \$250 for this violation.

Mr. Cezarro stated that he is here to appeal for leniency. They did have knowledge of the Safety Awareness law, and they do not dispute the violation. Since the violation occurred, Mr. Pacheco has received his OSHA 10-hour training. There were no further questions by the Board.

Mr. Collins restated his position for the record, that he does not believe the general contractor has a contractual agreement with the employee of a sub-contractor.

Mr. Eric Anderson made a motion that based on the testimony provided, a finding of fact is made that Mr. Jeffrey Pacheco, an employee of Site Tech, Inc., which is a sub-contractor to CB & I was working on the Woonsocket Water Tower Project without OSHA 10-hour certification, and a recommendation be made to the Director of Labor & Training that the fine against Mr. Pacheco be dismissed and the fine against Site Tech, Inc. be suspended for a 12-month period pending any further violations. Mr. Bernard Trembl seconded the motion. All members voted in favor.

Mr. Giardino made a motion that based on the testimony provided, a finding of fact is made that Mr. Jeffrey Pacheco, an employee of Site

Tech, Inc., which is a sub-contractor to CB & I was working on the Woonsocket Water Tower Project without OSHA 10-hour certification, and a recommendation be made to the Director of Labor & Training that the fine against CB & I be suspended for a 12-month period pending any further violations, and that this suspended fine will run concurrently. Mr. Trembl seconded the motion. All members voted in favor.

The last hearing on the agenda pertains to South County Concrete Foundations. Mr. William R. Owens and Mr. Anthony Manzo were in attendance with regards to these violations. Both Mr. Owens and Mr. Manzo were sworn in by the court reporter. A fine in the amount of \$500 for each of four (4) violations, for a total of \$2,000 was issued to South County Concrete Foundations, and a fine in the amount of \$500 was issued to each of the four (4) individuals.

Upon questioning, Mr. Owens informed the Board that his labor bill to Pezzucco Construction, Inc. (the general contractor) was \$21,000. He does not know what the total project cost was. Mr. Swanson stated that the total project cost was \$1.4 million dollars. Mr. Owens stated that he did not know about the OSHA 10-hour training requirement. It was ignorance of the law on his part. However, as soon as he was informed of the requirement, he sent the four (4) individuals cited to the OSHA 10-hour training, and they have all since received their OSHA 10-hour cards. Mr. Owens also stated that by February, 2005 all employees in the company will be trained. Mr. Owens stated that

South County Concrete Foundations was not notified of the OSHA 10-hour requirements in the sub-contractor documents, nor were they told when they went on the job site. Mr. Owens stated that this was only his second prevailing wage job. His company usually does residential work. There were no further questions by the Board.

Mr. Anderson made a motion that based on the testimony provided, a finding of fact is made that four (4) employees of South County Concrete Foundations, Inc. were working on the New Riverside Library, East Providence, RI without OSHA 10-hour certification, and a recommendation be made to the Director of Labor & Training that the \$500 fine for each of four (4) violations, for a total of \$2,000 to South County Concrete Foundations, Inc. be suspended for a 12-month period pending any further violations. Mr. Coulombe seconded the motion. All members voted in favor.

Mr. Anderson made a motion that based on the testimony provided, a finding of fact is made that Mr. Anthony Manzo, Mr. Andrew Owens, Mr. Steve Smith and Mr. John Desmarais were working on the New Riverside Library, East Providence, RI without OSHA 10-hour certification, and a recommendation be made to the Director of Labor & Training that the \$500 fine issued to each of these individuals be suspended for a 12-month period pending any further violations. Mr. Coulombe seconded the motion. All members voted in favor.

This concluded the hearings.

Mr. Val Lombardi requested to address the Board. Mr. Lombardi explained the procedures the Board should be following when making a motion. A finding of fact needs to be included in the motion.

Mr. Lombardi also stated that if a company is going to represent an employee(s), then the Board should have a letter from the employee(s) stating that they are requesting the company represent them in this matter.

Mr. Lombardi informed that Board that they can ask Mr. Swanson if the appealing company has been sited previously, however, it should be done after the testimony is taken, while deliberations over the motion are taking place.

Lisa Ribezzo will provide the Board with a general template to use when making a motion.

There was no further business before the Board.

Mr. Giardino made a motion to adjourn at 10:20 a.m. Mr. Coia seconded the motion. All members voted in favor.

The next meeting of the Board of Safety Awareness is scheduled for Wednesday, February 9, 2005 at 9:00 a.m. in Building 70 of the RI

**Department of Labor & Training, Second Floor Conference Room,
1511 Pontiac Avenue, Cranston, RI 02920.**